IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO. 130 OF 2000**

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Shantaram S. Rane,
r/o. Cottamorda- Aquem Baixo,
Rawnfond – Margao, Goa.

2. Prashad S. Rane,
r/o. Cottamorda – Aquem Baixo,
Rawnfond- Margao, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. R.S. Sardessai, Advocate for th respondents.

COAM : A.P. LAVANDE, J.

DATE : APRIL 27, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge Judgment and Award dated 19.07.1999, passed by the Additional District Judge III

(South) at Margao-Goa in Land Acquisition Case No. 24/96.

2. By Notification dated 12.8.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired for Konkan Railway Corporation Ltd., large chunks of lands, situated at Chaudi Canacona. Land belonging to the respondents bearing Survey Nos. 145/1 (part), admeasuring 725 sq. metres, was part of the acquired land. The Special Land Acquisition Officer, by his Award dated 22.12.1993, awarded Rs.9/- per sq. metre for the said land.

3. Being dissatisfied, the respondents sought reference under Section 18 of the Act. Before the reference Court, the respondents claimed Rs.200/- per sq. metre in respect of the acquired land and Rs. 200/- per sq. metre as severance charges for the balance area of 125 sq. metres. The reference Court enhanced the compensation from Rs.9/- to Rs. 41/- per sq. metres, relying upon Sale Deed dated 30.11.1985 and awarded Rs.20/- per sq. metre as severance charges for the balance area of 125 sq. metre.

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the acquired land at the rate of Rs.41/- per sq. metre and

Rs.20/- per sq. metre as severance charges, towards the balance area of 125 sq. metres, is legal and justified and, if not, what is the compensation payable in respect of the same?

5. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court was not justified in relying upon the sale deed dated 30.11.1985. The learned Counsel further submitted that the reference Court was not justified in awarding the severance charges at the rate of Rs.20/- per sq. metre. He further submitted that the reference Court erred in granting increase of 10 % every year on compounding basis. Placing reliance on the Judgment of the Apex Court in the case of ***Special Land Acquisition Officer, BYDA,Bagalkot vs. Mohd. Hanif Sahib,*** (AIR 2002 SC 1558), the learned Counsel submitted that the reference Court, at the most, could have awarded increase of 10 % every year, but not on compounding basis.

6. Mr. Sardessai, learned Counsel appearing for the respondents submitted that no fault can be found with the impugned award, since the reference Court has relied upon the consideration mentioned in the Sale Deed in respect of the very land which was purchased by the respondents by Sale Deed dated 30.11.1985. According to the learned Counsel, the reference Court did not commit any error in granting 10 % increase every year, on compounding basis. In so far as

the grant of compensation towards the severance charges is concerned, the learned Counsel submitted that on account of acquisition of major portion of the land bearing Survey No.145/1, the remaining area of 125 sq. metres has been rendered useless and, therefore, the reference Court was justified in awarding severance charges of Rs.20/- per sq. metre.

7. I have considered submissions made by the learned Counsel for the parties. The reference Court has relied upon the Sale Deed dated 30.11.1985 in respect of the very same property and fixed the compensation after granting increase of 10 % every year, on compounding basis. In my opinion, the reference Court was justified in relying upon the sale deed dated 30.11.1985 for fixing the compensation in respect of the acquired land since the sale deed was in respect of the very same property. However, the reference Court was not justified in granting increase of 10 % every year, on compounding basis. I find considerable merit in the submission of Mr. Afonso. In the case of ***Special Land Acquisition Officer, BYDA, Bagalkot vs. Mohd. Hanif Sahib, (supra),*** the Apex Court has upheld the yearly increase of 10 %. Therefore, the reference Court could not have granted 10 % increase on compounding basis. I, therefore, hold that the respondents are entitled to increase of 10% every year and considering that the land was purchased by Sale Deed dated 30.11.1985 and the Notification under Section 4 was issued on

12.8.1991, the compensation payable in respect of the acquired land comes to Rs.37.50 per sq. metre. I deem it appropriate to round up to Rs. 38/- per sq. metre. Accordingly, the compensation payable in respect of the acquired land is fixed at Rs.38/- per sq. metre.

8. In so far as severance charges are concerned, I am unable to accept the submission of Mr. Afonso. The reference Court having found that the balance area of 125 sq. metres was rendered useless on account of the acquisition of major portion of the land bearing Survey No.145/1, awarded 50 % of the compensation in respect of the balance land as severance charges. Since the compensation payable in respect of the acquired land is fixed at Rs.38/- per sq. metre, the respondents are entitled to severance charges at the rate of Rs.19/- per sq. metre in respect of the balance area of 125 sq. metres. Accordingly, I hold that the respondents are entitled to severance charges at the rate of Rs. 19/- per sq. metre in respect of the balance area of 125 sq. metres. Needless to mention that the respondents are entitled to all the statutory benefits under the Act.

9. In view of the above discussion, the appeal is partly allowed as stated above. The Award passed by the reference Court stands modified accordingly.

Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.